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12 **UNITED STATES BANKRUPTCY COURT**
13 **DISTRICT OF NEVADA**

14 **In re:**

15 **USA Commercial Mortgage Company,**

16 Case No. BK-S-06-10725-LBR
17 Case No. BK-S-06-10726-LBR
18 Case No. BK-S-06-10727-LBR
19 Case No. BK-S-06-10728-LBR
20 Case No. BK-S-06-10729-LBR

15 **USA Capital Realty Advisors, LLC,**

16 CHAPTER 11

17 **USA Capital Diversified Trust Deed Fund,**

18 **LLC,**
19 **USA Capital First Trust Deed Fund, LLC,**
20 **USA Securities, LLC,**

21 **Debtors.**
22 **Affects:**
23 All Debtors
24 USA Commercial Mortgage Company
25 USA Capital Realty Advisors, LLC
26 USA Capital Diversified Trust Deed Fund, LLC
27 USA Capital First Trust Deed Fund, LLC
28 USA Securities, LLC

**MOTION TO FURTHER EXTEND
DEADLINE TO FILE OBJECTION TO
ALLOWANCE OF CLAIMS
(with Certificate of Service)**

Date: January 11, 2008

Time: 9:30 a.m.

21 The USACM Liquidating Trust (the "USACM Trust") moves this Court for an
22 order pursuant to 11 U.S.C. § 502(b) and Bankruptcy Rule 3007 enlarging the deadline for
23 filing objections to Allowance of Claims, and in particular unsecured claims, for an
24 additional 120 days, or until June 12, 2008. This Motion is based upon the following
25 Memorandum of Points and Authorities and is supported by the Court's record and the
26 declaration of Edward M. Burr filed this date.

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1 **MEMORANDUM**

2 **Background**

3 On January 8, 2007, this Court entered its Order Confirming the “Debtors’ Third
4 Amended Joint Chapter 11 Plan of Reorganization” as modified herein [DE 2376]. Notice
5 of Entry of the Confirmation Order was filed on January 9, 2007, and served on January
6 11 and 12, 2007 [DE 2387].

7 Section VII A.1 Objection to Claims of the Plan provides:

8 Unless otherwise extended by the Court, objections to the
9 allowance of Claims and Equity Interests shall be filed and
10 served upon the entities asserting such Claims or Equity
11 Interests as follows: (A) for any and all Claims and Equity
12 Interests to which the General Bar Date applies, ninety (90)
13 days after the Effective Date....

14 Accordingly, the deadline to file an objection to such Claim was 90 days after the
15 Effective Date of March 12, 2007: June 10, 2007. The Court extended the deadline to
16 October 9, 2007 after a hearing [DE 4097]. The court extended the deadline to October
17 15, 2007 by a bridge order after a hearing on August 23, 2007 [DE 4625]. On October 11,
18 2007, the Court entered an order [DE 4971] extending the deadline to February 12, 2008.

19 When USACM Trust filed its first motion to extend the deadline to file objections
20 to proofs of claim, approximately 2,465 proofs of claim had been filed claiming:
21 \$2,812,293.40 as administrative; \$286,969,330.16 as secured; \$4,479,076.12 as priority;
22 and \$453,310,042.10 as unsecured. Since that motion was filed, approximately 120 more
23 claims were filed and claims were amended. There are approximately 2,419 newly
24 scheduled claims, comprised of, in the aggregate, \$169,742 in newly scheduled priority
25 and \$40,439,356 in unsecured claims.

26 To date, the USACM Trust has filed:

- 35 omnibus objections to approximately 1,690 claims filed as secured that asserted claims of over \$310,000,000;
- 3 omnibus objections to approximately 110 claims asserting priority status;

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1 • Objections to commission claims asserting priority status;

2 • Objections to 3 claims asserting administrative expense that aggregate over

3 \$95,000.

4 • 47 individual objections to claims filed as secured in the aggregate amount

5 of approximately \$8,000,000;

6 • 14 individual objections to claims filed as priority in the aggregate amount

7 of over \$640,000;

8 • 14 objections to claims filed in the USACM case which are not appropriate

9 claims against USACM, although they may be claims against or interests in one or more of

10 the jointly administered Debtors;

11 • Motions to Reclassify Claims of Insiders in Plan Class A-7 were filed

12 against 3 claimants and other objections were filed to several large claims on the ground

13 that Debtor has no liability;

14 • 30 objections to claims filed in wrong debtor cases;

15 • Withdrawals of over 25 proofs of claim; and

16 • Objection to Priority and Amended Proofs of claim.

17 A Motion for Summary Judgment Regarding (1) Responses to the USACM Trust's

18 First Through Thirty-Third Omnibus Objection to Claims Asserting a Secured Status;

19 (2) Responses to USACM Trust's First through Third Omnibus Objections to Claims

20 Asserting a Priority Status; and (3) Newly Alleged Secured and Priority Claim [DE 4391]

21 was filed on July 30, 2007. The motion sought to reclassify approximately 110 claims in

22 the aggregate amount of over \$17,500,000 as general unsecured claims. The motion came

23 on for hearing on October 15, 2007. Orders sustaining the objections and granting the

24 motion for summary judgment on approximately 95 claims were entered. Stipulations

25 have been reached with seven other claimants. Hearings have been scheduled on the

26 remaining claimants.

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1 Twelve Omnibus Objections to Proofs of Claim for Lack of Documentation were
2 filed on November 19, 2007. The motions request that the Court deny about 140 claims
3 totaling about \$12,000,000 because they were filed without evidence supporting their
4 claim's validity and the claims do not appear to be supported by USACM's books and
5 records. The hearing date on these objections is December 20, 2007.

6 On November 20, 2007, two Omnibus Objections to Proof of Claims Based, in
7 Whole or in Part, Upon Investment in the Opaque/Mt. Edge \$7,350,000 Loan were filed
8 requesting that the Court disallow about 15 Proofs of Claim filed by individual investors to
9 the extent such claims are based upon an investment in the Opaque/Mt. Edge \$7,350,000
10 loan. The omnibus hearing date is December 20, 2007.

11 Further, as the USACM Trust has received information from claimants, it has
12 entered into stipulations for the allowance and disallowance of priority and unsecured
13 claims. Conversely, some claimants have stipulated to either withdraw their claims or
14 have them reclassified as unsecured claims upon discussion with the USACM Trust's
15 counsel.

16 Most of the remaining claims to which the USACM Trust has not yet objected are
17 direct lender claims. The USACM Trust is in the process of filing omnibus objections to
18 those direct lender claims that are based upon USACM's handling of loans that fully
19 performed. The other direct lender claims relate to loans that are still outstanding. The
20 extent to which those loans perform and/or the direct lenders may be compensated from
21 the sale of collateral securing the loans. The Trustee is handling these claims on a loan by
22 loan basis. The February 12, 2008 deadline does not allow sufficient time for the Trustee
23 to review, investigate, analyze and resolve disputes on the claims.

24 Sorting thousands of claims on a loan by loan basis is difficult and time consuming.
25 For example, many dozens of claimants filed proofs of claim that either lack
26 documentation or sufficient information for the USACM Trust to determine if these are

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1 direct lenders claims, and if so, what loan or loans are at issue. When all of the direct
 2 lender claims are sorted on a loan by loan basis, the USACM Trust will then work through
 3 the paid loans to see if there is a valid basis for a claim, and if so, in what amount. The
 4 USACM Trust is trying not to file an objection to any claim on a particular direct loan
 5 until it is prepared to meet and confer with all of the claimants on that loan under the
 6 alternative dispute resolution mechanism provided by the Plan.

7 For all of these reasons, the USACM Trust believes it needs more than 120 days to
 8 complete its review of the claims and file objections, but asks only for 120 days now, so
 9 that the Court can monitor the claims resolution process.

10 **Discussion**

11 Bankruptcy Rule 9006(b)(1) provides that except as otherwise provided by the
 12 Rule:

13 when an act is required or allowed to be done at or within a specified period
 14 by the rules or by a notice given thereunder or by order of court, the court
 15 for cause shall at any time in its discretion (1) with or without motion or
 16 notice order the period enlarged if the request therefore is made before the
 17 expiration of the period originally prescribed or as extended by a previous
 18 order or (2) on motion made after the expiration of the specified period,
 19 permit the act to be done where the failure to act was the result of excusable
 20 neglect.

21 None of the exceptions in Rule 9006(b)(2) or (3) apply here. Accordingly, the
 22 Court may, for the cause shown in this Motion, extend the deadline for filing objections to
 23 allowance of claims. Nothing in the Plan prohibits the Court from extending the deadline
 24 for objecting to claims.

25 **Conclusion**

26 The USACM Trust requests that the Court enter its order further extending the
 27 deadline to file objections to allowance of claims until June 12, 2008, without prejudice to
 28 an additional extension.

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1 Dated: December 10, 2007.

2 **LEWIS AND ROCA LLP**

3 By /s/ RC (#006593)

4 Susan M. Freeman, AZ 4199 (pro hac vice)

5 Rob Charles, NV 6593

6 *Attorneys for USACM Liquidating Trust*

7 Proof of service

8 Copy of the foregoing served on December 10, 2007 via email, where an email address is
9 listed, or by first class mail, postage prepaid, addressed to:

10 All parties in interest listed on the Post
11 Effective Date Service List on file with
12 the Court.

13 /s/ Renee L. Creswell

14 Lewis and Roca LLP

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